Office - Supreme Court, U.S.
FILED
JUL 17 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 287

GERYS DESSALERNOS,
Petitioner,

vs.

JOSEPH SAVORETTI,
District Director of the United States Immigration and Naturalization Service, Miami, Florida,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

DAVID W. WALTERS
Attorney for Petitioner
Suite 1008 Ainsley Building
Miami 32, Florida

INDEX

	Page
Opinions below	2
Jurisdiction	2
Question presented	2
Statutes and regulations involved	2-5
Statement	5-7
Reasons for granting the writ	7
Conclusion	8
Appendix "A"—The opinion of the Court of Appeals	1a-10a
Appendix "B"—The Report of the Committee on the Judiciary Pursuant to S. Res. 137, 81st Congress, Second Session, Report No. 1515	1b-3b
Appendix "C"—Section 244 (a) (1-5) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1254(a) (1-5)	1c-3c
Appendix "D"—Section 19(d) of the Immigration Act of 1917, as amended (8 U.S.C. 155(d))	1d
Appendix "E"—Decision in *Sevitt v. Del Guercio*, 150 F. Supp. 56	1e-8e
Appendix "F" - Judgment	1f

CITATIONS

	Page
CASES:	
Sevitt v. Del Guercio, 150 F. Supp. 56	7, 1e-8e
STATUTES AND REGULATIONS:	
Sec. 241(a) (5) Immigration and Nationality Act (8 U.S.C. 1251(a) (5)	4-6
Sec. 244(a) (1-5) Immigration and Nationality Act of 1952 (8 U.S.C. 1254(a)	1-7
Sec. 19(d) of the Immigration Act of 1917, as amended (8 U.S.C. 155(d)	5a, 1d
28 U.S.C. 1254(1)	2
28 U.S.C. 2201	5
5 U.S.C. 1001 et seq.	5
8 U.S.C. 1252	5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No.....

GERYS DESSALERNOS,
Petitioner,

vs.

JOSEPH SAVORETTI,
District Director of the United States Immigration and Naturalization Service, Miami, Florida,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner, by and through counsel, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, confirming the judgment of the United States District Court for the Southern District of Florida, Miami Division, which dismissed petitioner's complaint for declaratory judgment. Petitioner was seeking a declaration that he was entitled to have his application for suspension of deportation considered by the Attorney General of the United States under the provisions of Section 244(a)(1) of the Immigration and Nationality Act (8) U.S.C. 1254(a)(1).

OPINIONS BELOW

The opinion of the Court of Appeals, set forth in Appendix A, infra, has not yet been reported. The opinion of the District Court is not reported. (Tr. 45, 46).

JURISDICTION

The judgment of the Court of Appeals was entered on April 22, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

DOES THE FACT THAT PLAINTIFF IS ADMITTEDLY STATUTORILY INELIGIBLE FOR SUSPENSION OF DEPORTATION UNDER SECTION 244(a)(5) OF THE IMMIGRATION AND NATIONALITY ACT (HE, THE PETITIONER, NOT BEING ABLE TO MEET THE PHYSICAL REQUIREMENTS OF THAT SECTION) PRECLUDE THE PETITIONER FROM PRESENTING FOR CONSIDERATION HIS APPLICATION FOR SUSPENSION OF DEPORTATION UNDER SECTION 244(a)(1) OF SAID ACT, IT BEING ADMITTED THAT THE PLAINTIFF FULLY MEETS THE REQUIREMENTS OF THE LATTER SECTION?

STATUTES AND REGULATION INVOLVED

Section 244(a) of the Immigration and Nationality Act, 8 U.S.C. 1254(a) provides:

"Sec. 244. (a) As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who - -

"(1) applies to the Attorney General within five years after the effective date of this Act for suspension of deportation; last entered the United States more than

two years prior to the date of enactment of this Act; is deportable under any law of the United States and is not a member of a class of aliens whose deportation could not have been suspended by reason of section 19(d) of the Immigration Act of 1917, as amended; and has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(2) last entered the United States within two years prior to or at any time after the date of enactment of this Act; is deportable under any law of the United States solely for an act committed or status existing prior to or at the time of such entry into the United States and is not within the provisions of paragraph (4) of this subsection; was possessed of all the requisite documents at the time of such entry into the United States; has been physically present in the United States for a continuous period of not less than five years immediately preceding his application under this paragraph, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this Act in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(3) last entered the United States within two years prior to, or at any time after the date of enactment of this Act; is deportable under any law of the United States for an act committed or status acquired subsequent to such entry into the United States and is

not within the provisions of paragraph (4) or (5) of this subsection; was possessed of all the requisite documents at the time of such entry into the United States; has been physically present in the United States for a continuous period of not less than five years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this Act in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(4) last entered the United States within two years prior to, or at any time after the date of enactment of this act; is deportable under paragraph (1) of section 241(a) insofar as it relates to criminals, prostitutes or other immoral persons, subversives, violators of narcotic laws and similar classes or under paragraph (2) of section 241(a), as a person who entered the United States without inspection or at a time or place other than as designated by the Attorney General, or without proper documents and is not within the provisions of paragraph (5) of this subsection; has been physically present in the United States for a continuous period of not less than ten years after such entry and immediately preceding his application under this paragraph and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this Act in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(5) is deportable under paragraph (4), (5), (6), (7), (11), (12), (14), (15), (16), (17), or (18) of section 241(a) for an act committed or status acquired subsequent to such entry into the United States or having last entered the United States within two years prior to, or at any time after the date of enactment of this Act, is deportable under paragraph (2) of section 241(a) as a person who has remained longer in the United States than the period for which he was admitted; has been physically present in the United States for a continuous period of not less than ten years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this Act in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his sprouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence."

STATEMENT

On the 8th day of February, 1955, petitioner filed his bill of complaint for a declaratory judgment under the Declaratory Judgment Act (28 U.S.C. 2201) and for review pursuant to the Administrative Procedure Act (5 U.S.C. 1001 et seq.) and the Immigration and Nationality Act (8 U.S.C. 1252) of the administrative order of deportation entered by the respondent. The petitioner complained that he was a native and citizen of Greece; that he entered the United States on March 11, 1947, at Philadelphia, Pennsylvania, as a seaman and has remained in the United States illegally since that date. That on or about June, 1954, in connection with a deportation proceeding instituted against him, he applied for an adjustment of his immigration status, pursuant to the provisions of Section 244(a)(1) of the

Immigration and Nationality Act (8 U.S.C. 1254(a)(1)), to-wit, suspension of deportation.

The respondent and the Attorney General, throughout the deportation proceedings, have refused to consider his application for suspension of deportation on the ground that they considered him statutorily ineligible for relief from deportation and adjustment of his immigration status under the provisions of Section 244(a)(1) of the Immigration and Nationality Act (8) U.S.C. 1254(a)(1), for the reason that it had been determined that he was also subject to deportation under the provisions of Section 241(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1251 (a)(5)) for failure to submit his annual address report card, and, as a consequence, his application for suspension of deportation would necessarily have to be considered under Section 244(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1254(a)(5)), a provision for which he could not statutorily qualify because of not having resided illegally in the United States for a period of ten years.

The petitioner complained that this reasoning is erroneous and contrary to law, and that having qualified under Section 244(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1254(a)(1)) for suspension of deportation, he was entitled to have his application considered under that provision notwithstanding. (T. 1-5).

On July 11, 1956, the Judge of the United States District Court entered his final judgment deciding the case on the specific issue:

> "Does the fact that plaintiff is admittedly statutorily ineligible for suspension of deportation under section 244(a)(5) of the Immigration and Nationality Act (he, the plaintiff, not being able to meet the physical requirements of that section) preclude the plaintiff from presenting for consideration his application for suspension of deportation under section 244(a)(1) of said Act, it being admitted that the plaintiff fully meets the requirements of the latter section?" (T. 45)

The Court entered its judgment declaring that the interpretation of the law by the Board of Immigration Appeals was correct, and found that the petitioner was statutorily ineligible for suspension of deportation under the provisions of Section 244(a) (8 U.S.C. 1254(a)). (T. 46)

The case of *Sevitt* v. *Del Guercio,* U.S.D C. Southern California, decided March 27, 1957, 150 F. Supp. 56, is precisely on point that the applicant was entitled to have his application for suspension of deportation considered by the Attorney General, thus creating a conflict in different jurisdictions, and bearing out and lending strength to the position of the petitioner.

On appeal, the Court of Appeals considered the appeal of the petitioner and, on April 22, 1957, entered its judgment affirming the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

The United States District Court, Southern California, Central Division, in the case of *Sevitt* v *Del Guercio, supra,* has decided in direct conflict with the decision relating to the case of the petitioner in the Fifth Circuit Court.

The question involved pertains solely to construction and interpretation of a federal statute, the application of which is of sufficient importance to warrant the consideration of the Supreme Court of the United States.

The administrative agency would serve to impose upon numbers of individuals a burden of meeting a requirement of eligibility for relief from deportation which was not intended by the Congress of the United States.

CONCLUSION

In view of the conflict between decisions of the various courts and in view of the importance of the question presented, it is respectfully submitted that the petition for writ of certiorari should be granted.

DAVID W. WALTERS
Attorney for Petitioner
Suite 1008 Ainsley Building
Miami 32, Florida

June, 1957

APPENDIX "A"

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 16340

GERYS DESSALERNOS,

Appellant,

versus

JOSEPH SAVORETTI, District Director, United States Immigration and Naturalization Service, Miami, Florida,

Appellee.

Appeal from the United States District Court for the Southern District of Florida.

(April 22, 1957)

Before TUTTLE, JONES and BROWN, Circuit Judges.

TUTTLE, Circuit Judge: This is an appeal from a judgment in an action to review a determination of the Board of Immigration Appeals by which the district court held that appellant is subject to deportation and is statutorily ineligible for waiver of deportation.

The undisputed facts are that appellant is an alien, a native and a citizen of Greece, who last entered the United States on March 11, 1947, as a seaman on a Certificate of Admission permitting a stay of not over 29 days; no extension has ever been applied for or granted. In 1952 appellant registered for the first and only time under the provisions of the Alien Registration Act,[1] and he has since failed to file the annual registration required by 8 U.S.C.A. §1305. The Special Inquiry Officer determined, and the Board of Immigration Appeals and the district court agreed, and appellant does not dispute, that the failure to register was willful and without reasonable excuse.

Appellant is thus deportable both as a nonimmigrant who has failed to comply with the conditions of that status, 8 U.S.C.A. §1251(a)(9), and as an alien who has failed to comply with the provisions of the Alien Registration Act, 8 U.S.C.A. §1251(a)(5). The only issue is whether appellant's application for suspension of deportation should be treated as falling under section 1254(a)(1) of the Title under which he

---

1 8 U.S.C.A. §1302, formerly 8 U.S.C. §452 (1946 ed.).

2 §244(a)(1) of the Immigration and Nationality Act of 1952, 8 U.S.C.A. §1254(a)(1), provides as follows:

"§1254. Suspension of deportation—Adjustment of status for permanent residence; contents

"(a) As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who—

"(1) applies to the Attorney General within five years after the effective date of this chapter for suspension of deportation; last entered the United States more than two years prior to June 27, 1952; is deportable under any law of the United States and is not a member of a class of aliens whose deportation could not have been suspended by reason of section 19(d) of the Immigration Act of 1917, as amended; and has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent or child, who is a citizen or an alien lawfully admitted for permanent residence; or

. . . .

The application for suspension was filed on August 10, 1954, more than seven years after appellant's entry; the failure to register annually as required by law would apparently not automatically make him a person not "of good moral character" as that term is defined by 8 U.S.C.A. §1101(f), nor would

could qualify for discretionary relief by the Attorney General,[2] or under section 1254(a)(5), under which he cannot qualify.[3]

Appellant contends that since he qualifies under one category established by section 1254(a) his application for suspension should be considered under that paragraph, even though he is ineligible under another category whose provisions are applicable to his situation but whose requirements he fails to meet. In particular, appellant argues that Congress, in drafting the 1952 Act, had wished to preserve the right of all aliens whose last entry had occurred before June 27, 1950, (two years prior to date of enactment of the Act) to apply for sus-

---

it make him ineligible for suspension of deportation under the now repealed provisions of §19(d) of the Immigration Act of 1917, as amended (formerly 8 U.S.C. §155(d)(1946 ed.)), which read as follows:

"§155. Deportation of undesirable aliens generally.

"(d) The provisions of subsection (c) [permitting suspension of deportation] shall not be applicable in the case of any alien who is deportable under (1) section 137 of this title; (2) section 175 of Title 21; (3) section 156a of this title; (4) any of the provisions of so much of subsection (a) of this section as relates to criminals, prostitutes, procurers, or other immoral persons, the mentally and physically deficient, anarchists, and similar classes; or (5) subsection (b) of this section."

None of the cited exclusions include the failure of an alien to register as required by law; see footnote 6, infra. §244(a)(5) of the Act, 8 U.S.C.A. §1254(a)(5), provides in part as follows:

"§1254. Suspension of deportation—Adjustment of status for permanent residence; contents

"(a) As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence in the case of an alien who—

"(5) is deportable under paragraphs (4)-(7), (11), (12), (14)-(17), or (18) of section 1251(a) of this title for an act committed or status acquired subsequent to such entry into the United States or having last entered the United States, within two years prior to, or at any time after June 27, 1952, is deportable under paragraph (2) of section 1251(a) of this title as a person who has remained longer in the United States than the period for which he was admitted; has been physically present in the United States for a continuous period of not less than ten years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this chapter in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence."

Appellant of course has not been a resident of the United States for 10 years since his last failure to register in January 1954, which is an "act" that makes him liable to deportation under §1251(a)(5).

pension of deportation under substantially the provisions and standards of the pre-1952 law, as long as they filed their application at any time before December 31, 1957 (five years after the effective date of the chapter). To support this proposition he points to the provisions of the Act, in which, as detailed below, a generally clear distinction is indeed made, in several paragraphs listed in the disjunctive, between those aliens who entered before and those who entered on or after June 27, 1950; in addition he refers us to the report of the Senate Judiciary Committee which first considered these provisions, which stated:

> "The subcommittee recommends that the present suspension of deportation provisions of the law be abolished within 5 years and that no alien who entered the United States within a period of 2 years prior to the enactment of the proposed legislation shall be eligible under the present suspension provision of the law, as modified."[4]

and then continued with its recommendations for the altered provisions of the new law.

The Government argues, in effect, that the provisions are meant to be mutually exclusive, and that since paragraph (5) refers specifically to the situation of the appellant, i.e. to one who violated the Alien Registration Act, while paragraph (1) only refers generally to aliens "deportable under any law of the United States," under the usual rules of statutory construction he must be treated as a member of the "particular class" into which he falls. *Baltimore National Bank* v. *State Tax Commission of Maryland,* 297 U.S. 209, 215; 82 C.J.S., Statutes §347(b).

The question raised is unfortunately not as easily resolved as each of the parties would have it; as in many cases under this Act the courts must resort to a close study of the complex interrelation of the several provisions of both the present and the former law, both

---

[4] "Report of the Senate Committee on the Judiciary pursuant to S.Res. 137," S.Rep. No. 1515, 81st Cong., 2nd Sess., April 20, 1950.

internally and, as required by the frequent crossreferences, with each other. On this particular narrow issue there appear to be no cases to guide us[5] nor has any legislative history more helpful than the general language quoted above been called to our attention. To arrive at the most reasonable construction it will therefore be necessary to examine the entire background and pattern of the pertinent sections.

Prior to 1940 there was no statute under which relief from deportation could be granted, and in general such aid could only be secured by means of a private bill in Congress. By the Alien Registration Act of 1940 the Attorney General was given discretionary authority to suspend deportation of aliens not guilty of any major misbehavior, defined by excluding from the relief provision aliens who fell into any of a number of listed categories of undesirables, upon a showing of good moral character for five years and of the threat of serious economic detriment to any legally resident, close relative of the alien, unless Congress passed a concurrent resolution disapproving of such a suspension. 54 Stat. 671, 8 U.S.C. §§155(c),(d) (1946 ed.). In 1948 the provision was changed by *also* permitting the suspension of deportation of aliens not in the excluded categories upon a mere showing of seven years residence (regardless of considerations of hardship to them or to their families), but requiring that in *all* cases of suspension Congress pass an affirmative concurrent resolution approving the stay. 62 Stat. 1206, 8 U.S.C. §155(c) (1946 ed., Supp. 11, 1949).

The 1952 Act completely recast the former suspension provisions. Five general categories of aliens were designated by successive paragraphs of 8 U.S.C.A. §1254 (a): (1) those whose "offense" did not disqualify them for suspension under the former Act (referred to as §19(d) of the Immigration Act of 1917, as amended), who had entered the United States, properly or improperly, before June 27, 1950, and who prior to their ap-

---

[5] See, however, the just reported district court case, Sevitt v. Del Guerico (S.D. Cal.), ...F.Supp..... (25 U.S.L.W. 2449), which reaches a result contrary to our's below.

plication for suspension of deportation had resided here for at least seven years and had maintained a good moral character; (2) those whose deportability arises from some circumstance existing at or before their entry, but not involving any major misbehavior or improper entry (defined by excluding those aliens falling into category (4)), whose entry was subsequent to June 26, 1950, and who have maintained at least five years of residence with good moral character up to the time of application; (3) those whose situation is similar to that of category (2) except that their deportability arises from circumstances after entry; (4) those whose deportability arises either from an improper entry or from major misbehavior before entry, who entered after June 26, 1950, and who have maintained at least ten years of residence with good moral character; (5) those whose deportability arises either from overstaying their permitted time in the United States or who belong in one of eleven enumerated categories of major undesirables (based generally on post-entry activities), regardless of their date of entry, who have maintained at least ten years of residence with good moral character. In all categories suspension may only be effected if deportation would "result in exceptional and extremely unusual hardship" to the alien or to a legally resident close relative.[6] Also, in suspensions under paragraphs (1)-(3) the relief may be granted unless disapproved by a concurrent resolution of Congress, while under paragraphs (4) and (5) an affirmative resolution is required to make the stay permanent.

In general the pattern of the new Act is thus clear: it continues in general terms and for a limited period the category of those who might seek suspension of deportation under the former Act, provided the alien entered before June 27, 1950, substituting, however, a uniform seven years residence with good moral character requirement and the harsher "hardship" provision of the new Act, and restoring the pre-1948 requirement of a mere absence of congressional disapproval. In general

---

[6] This requirement was intended to be harsher than that in the former statutes. See S. Rep. No. 1137, 82nd Cong., 2nd Sess., quoted in 8 U.S.C.A. §§1-1280 at 67-68.

aliens in similar circumstances who entered after June 26, 1950, can now qualify for suspension after five years of residence under the provisions of paragraphs (2) and (3), except if their entry was improper, in which case they fall under the ten year requirement of paragraph (4), or if their deportability arises by reason of failure to register (§1251(a)(5)) or because of violation of war emergency laws (§1251(a)(17)) in which case the ten year requirement of paragraph (5) applies. In addition, practically all aliens whose deportation could not have been suspended at all under the former Act may now qualify after ten years under the provisions of paragraphs (4) and (5). Also the racial eligibility provision of the former Acts has been removed, but additional restrictions are imposed on citizens of contiguous countries. It thus appears that Congress very thoroughly reshaped the statute, easing the requirements somewhat by reducing the qualifying time in some instances, eliminating the need for positive congressional approval in many situations, and in making it possible for some persons to qualify for (suspension of) deportation after ten years of reputable residence and subject to positive congressional approval who could not have qualified at all under the former law; on the other hand requirements were made more severe in other ways, by adopting a rather stricter "hardship" test and by changing the five or seven year requirement to ten for those guilty of certain offenses—including the failure to register under the Alien Registration Act. Even with respect to the pre-June 27, 1950, category changes were made, including the imposition of the uniform seven years residence with good moral character, the new "hardship" clause, and the December 31, 1957, terminal date for application. It cannot be said that the provisions as a whole are meant to be generally more or less restrictive than the former ones; all that can be said is that they appear to be more selectively drawn. Nor can it be said that there was an apparent congressional intent to preserve inviolate all the rights under the former statutes of the pre-June 27, 1950, category.

It should also be noted that for the most part the categories are mutually exclusive.[7] Apparently practically the only clear breakdown in that separation involves the very provision here under consideration: deportability due to failure to register, 18 U.S.C.A. §1251 (a) (5), which was not an offense precluding suspension of deportation under the former Act, and which thus does not explicitly preclude the applicability of paragraph (1) relief under the present Act, but which is specifically listed as included in category (5).

---

[7] Paragraph (1) excludes all those in paragraphs (2)-(4) and part of paragraph (5) by means of the June 27, 1950, cutoff date; paragraph (2) deals with deportability arising from circumstances at or before entry, while paragraph (3) explicitly and paragraph (5) implicitly deals with those arising from post-entry circumstances; both paragraphs (2) and (3) explicitly exclude aliens falling into paragraph (4) and paragraph (3) also explicitly excludes those falling into paragraph (5); the provisions of paragraphs (4) and (5) are also explicitly or implicitly mutually exclusive; paragraph (5) in its principal part lists eleven grounds of deportability to which it applies, nine of which match exclusions under the former act which are now incorporated into paragraph (1), and one inclusion in paragraph (4) similarly matches one more exception to paragraph (1):
§19(d) of the 1917 Act, as amended, 8 U.S.C. §155(d) (1946 ed.) (quoted in footnote 2, supra) includes the following exceptions, which may be matched as follows with the inclusions in paragraphs (4) and (5):

Exclusions from paragraph (1) (all references to former sections of Title 8)	Inclusions in paragraphs (4) and (5) (All references to present sections of Title 8)
§155(d)(1) referring to §137:	
anarchists, subversives, etc.	§1251(a)(7)*
§155(d)(2) referring to 21 U.S.C.A. §175:	
importing narcotics	§1251(a)(11)*
§155(d)(3) referring to §156a:	
trading in narcotics	§1251(a)(11)*
§155(d)(4) referring to §155(a):	
excludable at time of entry	§1251(a)(1)**
anarchists, subversives, etc.	§1251(a)(7)*
conviction of crime involving moral turpitude	§1251(a)(4)*
prostitution, white slavery, etc.	§§1251(a)(12), * (18)*
§155(d)(5) referring to §155(b):	
aiding other aliens to enter illegally	§1251(a)(13)***
conviction of possessing automatic weapon	§1251(a)(14)*
conviction of subversion within 5 years of entry	§1251(a)(15)*
more than one conviction of subversion	§1251(a)(16)*

* included in paragraph (5)
** included in paragraph (4)
*** not included in any paragraph (thus no suspension possible).
(All cross-references taken from cross-reference table, 8 U.S.C.A. xxv-xxx.)

It is certainly clear that Congress in 1952 took a much more serious view of the failure to register than had former legislatures; it is one of the few provisions in which suspension of deportation was made distinctly more difficult (at least for aliens who entered after June 26, 1950) than it had been under the former law, and no liberalizing features have been added. The principal other offense for which this is true is the offense of illegal entry §1251(a)(2), which, like failing to register, makes control over the alien more difficult and simplifies the offender's problem of avoiding investigation during the qualifying period. In addition aliens who aid others to enter illegally, §1251(a)(13), are entirely precluded from seeking suspension of deportation, thus suggesting that Congress intended to penalize through the immigration laws those who violated them.

In the case of improper entry the Act is clear that only entries subsequent to June 26, 1950, shall be subject to the more severe suspension requirements, for the applicable paragraph is (4) which includes the cut-off restriction, rather than (5), which does not. For failing to register the more severe conditions clearly apply to aliens entering after June 26, 1950, for they are not covered at all by paragraph (1). It would therefore be highly anomalous for Congress, having expressed the more severe view it now takes of the offense of failure to register, to permit certain persons who violate the registration provisions of the new Act after its passage (e.g., as here, in 1953 and 1954) to receive more consideration than others who are guilty of precisely the same omission at precisely the same time, merely because the former entered the United States earlier than the latter. Such might be the result where both the

---

§§1251(a)(2) (entry in violation of law) is apparently the only offense *included* in paragraph (4) which was not *excluded* from paragraph (1) relief (though the offense of illegal entry is listed in former §155(a) it is not an exclusion under §155(d)(4) because it does not relate to "criminals, prostitutes, procurers, or other immoral persons, the mentally or physically deficient, anarchists, and similar classes")—but the date of the entry determines positively into which category an alien falls. Similarly §§1251(a)(5) (failure to register) and (17) (conviction of violation of war emergency and security laws) are the only offenses *included* in category (5) which are not *excluded* from paragraph (1) relief except insofar as §1251(a)(17) overlaps §§1251(a)(4), (15), (16). Only to this extent is there a breakdown in the mutual exclusiveness of the categories.

entry and the offense occurred before the enactment of the new Act (or before the cut-off date two years earlier), but in the present situation, where the new Act gave notice of the more severe consequences of a failure to comply and compliance was still not forthcoming, such a construction is not reasonable. Congress should not be thought to have created two categories of aliens, distinguishable only by their date of entry, whose improper behavior carries different consequences. In view of the above, and in view also of the apparent congressional intent to make the five categories of §1254(a) mutually exclusive, we must hold that the explicit inclusion in category (5) of deportability for failure to register implicitly excludes it from category (1).

The judgment of the district court is AFFIRMED.

APPENDIX "B"

THE REPORT OF THE COMMITTEE ON THE JUDICIARY PURSUANT TO S. RES. 137, 81st CONGRESS, SECOND SESSION, REPORT No. 1515.

"The subcommittee recommends that the present suspension of deportation provisions of the law be abolished within 5 years and that no alien who entered the United States within a period of 2 years prior to the enactment of the proposed legislation shall be eligible under the present suspension of deportation provision of the law, as modified.

"The subcommittee recommends the enactment of provisions for adjustment of status where the grounds for deportation of an alien arise prior to entry, as follows:

"(1) That the Commissioner be authorized in his discretion to adjust status in the case of a deportable alien (except one who is of the criminal, subversive, or immoral classes or who enters the United States without proper documents), when (a) the alien has resided in the United States continuously for at least a period of 5 years; and (b) the alien has maintained good moral character for that period; and (c) the deportation of such alien would result in extreme and unusual hardship, and (d) a warrant of arrest for deportation has not been issued within said period for said alien. Each such case is to be reported to the Congress, and if either House, at the session during which the case is reported or during the session following, passes a resolution stating in substance that it does not favor the adjustment of status of the alien to that of a lawful permanent resident, the alien will then be deported. If neither House takes any action on such case the adjustment of status will then become final.

"(2) That the Commissioner be authorized in his discretion to adjust status in the case of a deportable

alien who is of the criminal, subversive, or immoral classes or who enters the United States without proper documents, when (a) the alien has resided in the United States continuously for at least a period of 10 years; and (b) the alien has maintained good moral character for that period; and (c) the deportation of such alien would result in extreme and unusual hardship; and (d) a warrant of arrest for deportation has not been issued within said period for said alien. Each such case is to be reported to the Congress, and if the Congress, at the session during which the case is reported or during the session following, passes a resolution stating in substance that it favors the adjustment of status of the alien to that of a lawful permanent resident, the adjustment of status will be final. If the Congress takes no action on such case the alien will then be deported.

"The subcommittee recommends the enactment of provisions for adjustment of status where the grounds for deportation of an alien arose after entry, as follows:

"(1) That the Commissioner be authorized in his discretion to adjust status in the case of a deportable alien (except one who is of the criminal, subversive, or immoral classes or who overstays his period of admission), when (a) the alien has resided in the United States continuously for at least a period of 5 years; and (b) the alien has maintained good moral character for that period; and (c) the deportation of such alien would result in extreme and unusual hardship; and (d) a warrant of arrest for deportation has not been issued within said period for said alien. Each such case is to be reported to the Congress, and if either House, at the session during which the case is reported or during the session following, passes a resolution stating in substance that it does not favor the adjustment of status of the alien to that of a lawful permanent resident, the alien will then be deported. If neither House takes any action on such case the adjustment of status will then become final.

"(2) That the Commissioner be authorized in his discretion to adjust status in the case of a deportable alien who is of the criminal, subversive or immoral classes or who overstays his period of admission, when (a) the alien has resided in the United States continuously for at least a period of 10 years; and (b) the alien has maintained good moral character for that period; and (c) the deportation of such alien would result in extreme and unusual hardship; and (d) a warrant of arrest for deportation has not been issued within said period for said alien. Each such case is to be reported to the Congress, and if the Congress, at the session during which the case is reported or during the session following, passes a resolution stating in substance that it favors the adjustment of status of the alien to that of a lawful permanent resident, the adjustment of status will be final. If the Congress takes no action on such case the alien will then be deported.

"The subcommittee recommends that an alien who entered the United States on a nonimmigrant visa may in the discretion of the Commissioner have his status adjusted to the status of a permant resident if (1) a quota number of the country of which the alien is a national is available, (2) such alien is not inadmissible to the United States under the law, and (3) such alien is not deportable."

APPENDIX "C"

SECTION 244(a)(1), 244(a)(2), 244(a)(3), 244(a)(4), and 244(a)(5) OF THE IMMIGRATION AND NATIONALITY ACT OF 1952 (8 U.S.C. 1254(a)(1), 1254(2)(2), 1254(a)(3), 1254(a)(4), and 1254(a)(5).

"Sec. 244. (a) As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who--

"(1) applies to the Attorney General within five years after the effective date of this Act for suspension of deportation; last entered the United States more than two years prior to the date of enactment of this Act; is deportable under any law of the United States and is not a member of a class of aliens whose deportation could not have been suspended by reason of section 19(d) of the Immigration Act of 1917, as amended; and has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(2) last entered the United States within two years prior to or at any time after the date of enactment of this Act; is deportable under any law of the United States solely for an act committed or status existing prior to or at the time of such entry into the United States and is not within the provisions of paragraph (4) of this subsection; was possessed of all the requisite documents at the time of such entry into the United States; has been physically present in the United States

for a continuous period of not less than five years immediately preceding his application under this paragraph, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this Act in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(3) last entered the United States within two years prior to, or at any time after the date of enactment of this Act; is deportable under any law of the United States for an act committed or status acquired subsequent to such entry into the United States and is not within the provisions of paragraph (4) or (5) of this subsection; was possessed of all the requisite documents at the time of such entry into the United States; has been physically present in the United States for a continuous period of not less than five years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this Act in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(4) last entered the United States within two years prior to, or at any time after the date of enactment of this Act; is deportable under paragraph (1) of section 241(a) insofar as it relates to criminals, prostitutes or other immoral persons, subversives, violators of narcotic laws and similar classes or under paragraph

(2) of section 241(a), as a person who entered the United States without inspection or at a time or place other than as designated by the Attorney General, or without proper documents and is not within the provisions of paragraph (5) of this subsection; has been physically present in the United States for a continuous period of not less than ten years after such entry and immediately preceding his application under this paragraph and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this Act in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(5) is deportable under paragraph (4), (5), (6), (7), (11), (12), (14), (15), (16), (17) or (18) of section 241(a) for an act committed or status acquired subsequent to such entry into the United States or having last entered the United States within two years prior to, or at any time after the date of enactment of this Act, is deportable under paragraph (2) of section 241(a) as a person who has remained longer in the United States than the period for which he was admitted; has been physically present in the United States for a continuous period of not less than ten years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this Act in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence."

APPENDIX "D"

SECTION 19(d) OF THE IMMIGRATION ACT OF 1917, AS AMENDED (8 U.S.C. 155(d))

"(d) The provisions of subsection (c) shall not be applicable in the case of any alien who is deportable under (1) section 137 of this title; (2) section 175 of Title 21; (3) section 156a of this title; (4) any of the provisions of so much of subsection (a) of this section as relates to criminals, prostitutes, procurers, or other immoral persons, the mentally and physically deficient, anarchists, and similar classes; or (5) subsection (b) of this section. Feb. 5, 1917, c. 29, §19, 39 Stat. 889; Ex. Ord. No. 6166, §14, June 10, 1933; Reorg. Plan No. V, eff. June 14, 1940, 5 Fed. Reg. 2423, 54 Stat. 1238; June 28, 1940, c. 439, Title II, §20, 54 Stat. 671."

APPENDIX "E"

Bennie SEVITT, Plaintiff,

v.

Albert DEL GUERCIO, Officer in Charge, Immigration and Naturalization Service, Los Angeles, California, Defendant.

No. 19588

United States District Court
S. D. California, Central Division.
March 27, 1957.

Deportation proceeding. The Board of Immigration Appeals dismissed alien's appeal from findings of Immigration and Naturalization Service and dismissed his application for suspension of deportation and alien sought judicial review of such administrative action. The District Court, Byrne, J., held that where alien satisfied requirements of one of five alternative paragraphs provided by statute for the relief of suspension of deportation, his application for suspension of deportation should have been considered by Board of Immigration Appeals notwithstanding the fact that he was not qualified for suspension of deportation under another paragraph of said statute specifically referring to section of law making the offense with which alien was charged, deportable.

Judgment in accordance with opinion.

1. Aliens—Key 54(1)

Statute providing that a deportable alien would be eligible for discretionary relief of suspension of depor-

---

1. Plaintiff was also found deportable for violation of 8 U.S.C.A. §1251(a) (9), in that as a temporary visitor for pleasure he failed to comply with the conditions of that status. However, in this proceeding we are only concerned with the administrative decision relating to 8 U.S.C.A. §1251(a) (5), as the ultimate issue here is whether the plaintiff's application for suspension of deportation may be considered, and the determination of that issue depends upon the construction to be given 8 U.S.C.A. §1251(a) (5).

tation if he qualified under provisions of five numbered paragraphs separated by the word "or", by the use of the disjunctive conjunction, "or", presented a choice dependent only upon alien meeting the standards required in particular paragraph which alien might seek to use. Immigration and Nationality Act, §244(a) (1-5), 8 U.S.C.A. §1254(a) (1-5).

2. Aliens—Key 54(1)

Where alien satisfied requirements of one of five alternative paragraphs provided by statute for relief of suspension of deportation, his application for suspension of deportation should have been considered by Board of Immigration Appeals, notwithstanding the fact that he was not qualified for suspension of deportation under another paragraph of said statute specifically referring to section of law making the offense with which alien was charged deportable. Immigration and Nationality Act, §244(a) (1-5), 8 U.S.C.A. §1254(a) (1-5).

---

2. "§1254. Suspension of deportation—Adjustment of status for permanent residence; contents

"(a) As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who—

"(1) applies to the Attorney General within five years after the effective date of this chapter for suspension of deportation; last entered the United States more than two years prior to June 27, 1952; is deportable under any law of the United States and is not a member of a class of aliens whose deportation could not have been suspended by reason of section 19(d) of the Immigration Act of 1917, as amended; and has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(2) last entered the United States within two years prior to or at any time after June 27, 1952; is deportable under any law of the United States solely for an act committed or status existing prior to or at the time of such entry into the United States and is not within the provisions of paragraph (4) of this subsection; was possessed of all of the requisite documents at the time of such entry into the United States; * * * has been physically present in the United States for a continuous period of not less than five years immediately preceding his application under this paragraph, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this chapter in deport tion proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely

3. Statutes—Key 190

Although court may depart from the strict wording of a statute in order to give the statute a reasonable construction where a literal construction would result in absurdity or defeat the object intended by Congress, where a statute is clear and unambiguous, it must be literally construed.

Wirin, Rissman & Okrand, Los Angeles, Cal., for plaintiff.

Laughlin E. Waters, U. S. Atty., Max F. Deutz, Volney V. Brown, Jr., Asst. U. S. Attys., Los Angeles, Calif., for defendant.

BYRNE, District Judge.

Bennie Sevitt is an alien, a native and citizen of Ireland who entered the United States on March 18, 1947, with a visitor's visa. He has resided in this country continuously since that time.

After a hearing conducted by a Special Inquiry Officer of the Immigration and Naturalization Service, Sevitt was found to be deportable under 8 U.S.C.A. §1251(a) (5)[1] for failure to register and notify the Immigration and Naturalization Service of his address in the United States or to notify them of changes of address as required by 8 U.S.C.A. §1305. Timely application for suspension of deportation was filed and an appeal was taken to the Board of Immigration Appeals,

---

unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(3) last entered the United States within two years prior to, or at any time after June 27, 1952; is deportable under any law of the United States for an act committed or status acquired subsequent to such entry into the United States and is not within the provisions of paragraph (4) or (5) of this subsection; was possessed of all of the requisite documents at the time of such entry into the United States; has been physically present in the United States for a continuous period of not less than five years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this chapter in deportation proceedings up to the

which Board dismissed the appeal and refused to consider plaintiff's application for suspension of deportation because it thought it was barred from doing so.

Sevitt has exhausted his administrative remedies and here seeks judicial review of the administrative action. 5 U.S.C.A. §1009; 8 U.S.C.A. §1252; Shaughnessy v. Pedreiro, 349 U.S. 48, 75 S.Ct. 591, 99 L.Ed. 868.

The plaintiff asserts that there is no reasonable, substantial or probative evidence to support the administrative finding that he failed to furnish address information as required by 8 U.S.C.A. §1305 or to support the finding that such failure was wilful and not excusable. This argument is without merit. The administrative record shows (Brief filed with Board) Sevitt conceded "* * * that until the time of his arrest by Immigration Officers he did not furnish the required address information" and that "he failed to register because he feared detection * * *". The record also shows that during the period he failed to comply with the address requirements, he used a fictitious name. It is an understatement to say that the administrative findings were based upon reasonable substantial and probative evidence.

A more serious problem is presented on the question of whether the Board of Immigration Appeals erred in refusing to consider Sevitt's application for suspension of deportation.

---

time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(4) last entered the United States within two years prior to, or at any time after June 27, 1952; is deportable under paragraph (1) of section 1251 (a) of this title insofar as it relates to criminals, prostitutes or other immoral persons, subversives, violators of narcotic laws and similar classes or under paragraph (2) of section 1251(a) of this title, as a person who entered the United States without inspection or at a time or place other than as designated by the Attorney General, or without the proper documents and is not within the provisions of paragraph (5) of this subsection; has been physically present in the United States for a continuous period of not less than ten years after such entry and immediately preceding his application under this paragraph and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this chapter in deportation proceedings up to the time of applying

The authority to grant the relief of suspension of deportation is found in 8 U.S.C.A. §1254(a)[2] which is divided into five paragraphs numbered (1) to (5). Each of the five paragraphs relates to different classes of aliens, the classification depending upon when the alien entered the United States, the grounds of deportation, whether the deportable act was committed or status existed prior to entry, at the time of entry, or subsequent to entry, and the length of time the alien has been present in the United States.

The complexity of the problem in the instant case results from the fact that an alien such as Sevitt who has violated the registration requirements falls within the provisions of *both* paragraph (1) and paragraph (5), except that to be eligible for suspension of deportation under (5), the alien must have been physically present in the United States for a continuous period of not less than ten years immediately following the commission of the act (failure to register) for which he is deportable; whereas to be eligible under (1), the alien need only be present in the United States for a period of not less than seven years immediately preceding the date of application for suspension of deportation. The crucial importance of this difference to Sevitt is that he has been in this country for the seven-year period

---

to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence; or

"(5) is deportable under paragraphs (4)-(7), (11), (12), (14)-(17), or (18) of section 1251(a) of this title for an act committed or status acquired subsequent to such entry into the United States or having last entered the United States within two years prior to, or at any time after June 27, 1952, is deportable under paragraph (2) of section 1251(a) of this title as a person who has remained longer in the United States than the period for which he was admitted; has been physically present in the United States for a continuous period of not less than ten years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this chapter in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence."

required under (1) but has not been in the country for the ten-year period required under (5).

The Board of Immigration Appeals refused to consider Sevitt's application for suspension of deportation for the reason, as counsel for the Government now argues, that while the reference in paragraph (1) to aliens "deportable under any law of the United States" technically includes aliens deportable for failure to meet registration requirements, paragraph (1) does not apply to such aliens because paragraph (5) *specifically refers to the section* of law making that offense deportable. It is the government's position that when an alien is deportable under any provision of law specifically mentioned in paragraph (5), his application for suspension of deportation may be considered, if at all, only under that paragraph.

[1, 2] The five paragraphs of §1254(a) show a statutory design to enact remedial legislation covering a number of different contingencies. In formulating the several possible categories, Congress provided that a deportable alien is eligible for the discretionary relief of suspension of deportation if he qualifies under the provisions of paragraphs (1) *or* (2) *or* (3) *or* (4) *or* (5). By the use of the disjunctive conjunction, "or", it is clear that Congress intended to present a choice dependent only upon the alien meeting the standards as required in the particular paragraph he seeks to avail himself of. Sevitt satisfies the requirements of paragraph (1) as he applied for the relief within five years after the effective date of the 1952 Act; he entered the United States more than two years prior to the enactment of the Act; he is deportable under a law of the United States and is not a member of a class of aliens whose deportation could not have been suspended by reason of section 19(d) of the 1917 Act, 39 Stat. 889; he has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of his application. It follows that his application should have been considered by the Board of Immigration Appeals.

Under the provisions of §1254(e) an alien who is deportable for failure to comply with the registration requirements may be granted the privilege of voluntary departure only if he can meet the ten-year requirement of §1254(a)(5). It is unreasonable to believe, asserts the government, that notwithstanding Sevitt's inability to meet the standards for the discretionary relief of voluntary departure, Congress intended that he be eligible for the greater relief of suspension of deportation under the standards set forth in paragraph (1) of §1254(a). The answer to this assertion may be found in the time limitation of paragraph (1) which paragraph by its terms becomes ineffective after June 27, 1957. However, be that as it may, the courts should not resort to conjecture regarding policy decisions of Congress.

[3] While it is the rule that the courts may depart from the strict wording of a statute in order to give the statute a reasonable construction where a literal construction would result in an absurdity or defeat the object intended by Congress, Miller v. Bank of America N.T.&S.A., 9 Cir., 166 F.2d 415, where the statute is clear and unambiguous it must be literally construed. Hamilton v. Rathbone, 175 U.S. 414, 20 S.Ct. 155, 44 L.Ed. 219; Thompson v. United States, 246 U.S. 547, 38 S.Ct. 349, 62 L.Ed. 876; Crooks v. Harrelson, 282 U.S. 55, 51 S.Ct. 49, 75 L.Ed. 156. Nothing could be clearer than the statement of Congress that the Attorney General may, in his discretion, suspend deportation in the case of an alien who meets the standards prescribed in paragraph (1) of §1254(a).

This Court in Acosta v. Landon, D.C., 125 F.Supp. 434, 441, said:

> "The courts may not suspend the deportation of a deportable alien as that discretionary power is vested solely in the Attorney General, 8 U.S.C.A. §1254. However, when the Attorney General is required as a condition precedent to an order of deportation to exercise his discretion with respect to the suspension of deportation, the validity of the

order must rest upon the needed exercise of discretion. If it is lacking, the order is ineffective. Where the order is ineffective, the custody of the petitioner is unlawful, and the court must order his discharge. A formal order to that effect will be entered."

Acosta v. Landon was a habeas corpus proceeding and Acosta was in custody. Sevitt is not in custody and there is no need to order his discharge. However, the order of deportation is ineffective and the alien may not be deported until the Attorney General, acting through his subordinates, has exercised his discretion. Judgment will be entered accordingly.

Counsel for plaintiff will prepare, serve and lodge findings and judgment pursuant to Rule 7 of the Rules of this Court.

APPENDIX "F"

JUDGMENT

EXTRACT FROM THE MINUTES OF APRIL 22, 1957

GERYS DESSALERNOS,

No. 16340 versus

JOSEPH SAVORETTI, District Director,
United States Immigration and
Naturalization Service,
Miami, Florida

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was taken under submission by the Court upon the record and briefs on file;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.